UNITED STATES
v.
RUTH ARCAND, ET AL.

IBLA 75-632 Decided January 9, 1976

Appeal from decision of Administrative Law Judge Dean F. Ratzman declaring mining claims null and void. CA 452.

Affirmed.

1. Mining Claims: Discovery: Generally

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

2. Mining Claims: Contests--Mining Claims: Determination of Validity--Mining Claims: Discovery

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

3. Administrative Procedure: Burden of Proof--Mining Claims: Contests

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

4. Administrative Procedure: Burden of Proof--Mining Claims: Contests

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

5. Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally

No discovery of a valuable mineral deposit is demonstrated on a placer mining claim which yields small amounts of gold from stream beds but which is suitable only for recreation mining because it could never be expected to produce an economic return in any way commensurable with the labor and cost involved in such production.

APPEARANCES: Rudy Johnson and Merle E. Reed, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Rudy Johnson and Merle E. Reed appeal from the May 15, 1975, decision of Administrative Law Judge Dean F. Ratzman which declared their mining claims null and void. Their claims are the Big Ruth Nos. 1 and 2 placer mining claims and the Rough Ridge Claim a/k/a Rough Ridge Mine Placer Nos. 1, 2, 3, and 4, a/k/a Rough Ridge Mine Lode Nos. 1, 2, 3, and 4. The claims are located in Ts. 23 and 24 N., R. 3 E., Mount Diablo Meridian, Butte County, California. All of the claims were declared null and void for lack of discovery of a valuable mineral deposit within the limits of the claims.

[1] The general mining law, 30 U.S.C. § 22 et seq. (1970), provides that one who has discovered a valuable mineral deposit on land open to exploration may receive title to that land. A valuable mineral deposit is one which has present economic value; that is, the deposit can presently be mined, removed and marketed at a reasonable profit. United States v. Coleman, 390 U.S. 599, 602 (1968). While the Department does not require "a sure thing," it does require that there appear to the man of ordinary prudence to be a reasonable prospect of success in developing a paying mine. Chrisman v. Miller, 197 U.S. 313, 322 (1905); Cameron v. United States, 252 U.S. 450, 459 (1920); Best v. Humboldt Placer Mining Co., 371 U.S. 334, 335-36 (1963).

[2] We note that the land on which the disputed claims are located was withdrawn from mineral entry on June 28, 1971. Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If, at the date of the withdrawal, the claim was not supported by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market or the finding of additional mineral. United States v. Fleming, 20 IBLA 83, 98 (1975); United States v. Henry, 10 IBLA 195, 199 (1973); see also United States v. Converse, 72 I.D. 141 (1965), aff'd Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969). The mineral involved in this case is gold. The price of gold on June 28, 1971, was $41 per troy ounce.

[3] When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. Foster v. Seaton, 271 F.2d 836, 838 (D.C. Cir. 1959); United States v. Springer, 491 F.2d 239, 242 (9th Cir. 1974); United States v. Zweifel, 508 F.2d 1150, 1157 (10th Cir. 1975). It is clear that the mining claimant is the proponent of an order to declare his claim valid. Thus, pursuant to the Administrative Procedure Act, 5 U.S.C. § 556 (1970), it is the claimant who bears the risk of nonpersuasion. Foster v. Seaton, supra; United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975); United States v. Ramsey, 14 IBLA 152, 154 (1974).

[4] The Government has established a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery. United States v. Hallenbeck, 21 IBLA 296, 300 (1975); United States v.

Blomquist, 7 IBLA 351 (1972). While the mineral examiner's conclusion must be based on reliable, probative evidence, United States v. Winters, 2 IBLA 329, 335, 78 I.D. 193, 195 (1971), he is not required to perform discovery work, to explore or sample beyond the claimant's current workings, or to conduct drilling programs for the benefit of claimants. United States v. MacIver, 20 IBLA 352, 355 (1975); United States v. Wells, 11 IBLA 253 (1973); United States v. Grigg, 8 IBLA 331, 343, 79 I.D. 582, 688 (1972).

The contestant's mineral examiner, George O. Scarfe, made five visits to the contested claims prior to the first hearing. 1/ On his second visit, May 24, 1971, he met one of the claimants, Mrs. Ruth Arcand, in order to determine the location of discovery points on the claims. As a result he took seven samples. The first sample was taken from a mine shaft on the Rough Ridge claim. That shaft, as well as several others was nearly filled with water. He found no gold in that sample. The other six samples were taken from bedrock on the edge of the stream running through the Big Ruth Nos. 1 and 2 placer mining claims. The samples showed traces of gold in meager amounts. On a later visit, Scarfe and several other geologists met with claimants Reed and Johnson who stated that one mine shaft was partially dewatered. The mineral examiner thought that it was still not possible to get a valid sample from under the water. On the basis of his exploration and sampling, the Government's mineral examiner testified that he believed that no discovery of a valuable mineral deposit had been made on the claims, as a prudent man would not be justified in the further expenditure of his labor and means with the expectation of developing a paying mine (Tr. I, 27).

Contestee William Clifton testified that he had worked the Big Ruth claims with results good enough to indicate a discovery. For example, he estimated that he removed 10 ounces of gold in one day from a crevice using only a spoon and a glass. Clifton also testified that he had removed a total of 20-25 ounces of gold in the years 1969 and 1970, using his spoon and glass for approximately 15 eight-hour days and working a total of 10 to 15 yards of material in the process. Based on these findings, he testified that a family could make a living on the claims (Tr. I, 71, 83).

Contestee Reed testified that he had recovered approximately four to five ounces of gold in 15 to 20 days, or 1/4 to 1/3 ounce per day of mining (Tr. I, 99). He stated that he did very little mining in 1970, 1971, or 1972. He did not sell the gold as it was "too tough to come by" (Tr. I, 99).

1/ There were two different hearings in this case. The testimony from the first hearing will be cited "Tr. I" and the testimony from the second hearing will be cited "Tr. II."

Contestee Rudy Johnson testified that over a period of 5 years he had recovered 25 ounces of gold in 50 to 60 working days or an average of 2/5 to 1/2 ounce of gold per working day (Tr. I, 126). In removing the material in the stream with his suction dredge, he had the help of a hired hand and his family. He believed that there was sufficient gold on the claims to constitute a discovery.

At the conclusion of the first hearing the parties stipulated to the taking of further samples.

The Government's mineral examiner returned to the claims in the summer of 1974, to take further samples. He took seven samples from three different points designated by the contestees as their discovery points. The results of that sampling essentially confirm the mineral examiner's earlier examination and conclusion that no discovery had been made on the claims. The gold in the seven samples averaged 49.2 per sample and 31.3 per cubic yard of material, calculated at $41 per ounce, the price of gold when these claims were withdrawn from further entry. The mineral examiner estimated that he had processed 1.36 cubic yards of gravel per hour with a 3-inch dredge with at least one other person assisting in the operation of the dredge (Ex. 8). While a larger dredge such as a 6-inch dredge, might theoretically handle a larger volume of material in the same time period, the mineral examiner did not believe it possible due to the nature of the material on these claims (Tr. II, 19).

It is clear that a prima facie case was established by the contestant. Based on the samples taken by the mineral examiner, the material in the stream bed contained gold worth 31.3 per cubic yard of material. The mineral examiner, working with at least one other person, was able to process approximately 1.36 cubic yards of material per hour. The rate of return at that rate of processing is approximately 42.5 per hour - not counting equipment, fuel, or transportation costs. Even if the appellants could run four times as much material with a 6-inch dredge, their return for at least two people would be 85 per man hour of work without deduction for any other expenses. Clearly, no prudent man would work on a sustained commercial basis for such meager wages. Nor do such meager returns in any sense constitute a discovery. United States v. Alexander, 17 IBLA 421, 434 (1974) 2/; United States v. Harper, 8 IBLA 357, 362 (1972).

2/ Appeal pending. Alexander v. United States, Civ. No. 75-465 (D. Ore.).

Most of the evidence adduced by the appellants supports the conclusions of the mineral examiner, even though they vigorously attack those conclusions. For example, at the first hearing, William Clifton attempted to discredit the probative value of the mineral examiner's sampling. Clifton testified that one was not likely to find any gold at the edge of the stream where the mineral examiner took the samples, as the gold in that location had already been mined out (Tr. I, 72-73). However, by far the best sample that was taken before the second hearing was sample number 4 which was taken from bedrock at the edge of the stream (Tr. II, 41).

[5] Furthermore, the testimony of appellants Reed and Johnson with respect to the value of recovered gold supports the conclusion of the mineral examiner that no discovery exists on these claims. At best, the values recovered are meager relative to the amount of work and expense necessary to recover them. In his decision of May 15, 1975, at page 17, Judge Ratzman found that the Johnsons were mining principally for the recreational value of the activity. The fact that their returns are so meager and the fact they don't sell the gold support that conclusion. While recreation mining is a legitimate activity on federal land which is open to mining and prospecting, no property right vests in the miner until he can demonstrate that he has discovered a valuable mineral deposit. United States v. Horn, 16 IBLA 211, 214 (1974). Returns which are so meager that they will not attract the labor and means of a person of ordinary prudence are not sufficient to demonstrate discovery of a valuable mineral deposit. United States v. Harper, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Dean F. Ratzman is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Anne Poindexter Lewis
Administrative Judge